IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8370 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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GSRTC - Petitioner(s)

Versus

PRAVINBHAI RAMSINHBHAI DARBAR - Respondent(s)

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Appearance :
MR NAGESH C SOOD for Petitioner(s) : 1,
MR MUKESH H RATHOD for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 22/11/2005

ORAL JUDGMENT

1. This petition is directed against the award dated 15th March 2000 passed by the Labour Court, Ahmedabad in Reference No.(LCA) 1240/98 whereby the said reference was partly allowed and the petitioner was directed to reinstate the respondent and to pay the respondent 25% back wages by further substituting the punishment of stoppage of two increments with permanent effect.

2. The short facts of the case are that the respondent is working as a driver with the petitioner Corporation. A complaint came to be registered

against the respondent in pursuance of which an inquiry was initiated. After conducting the inquiry and after following proper procedure the services of the respondent were terminated. The appeal filed by the respondent also came to be rejected. The respondent therefore raised a dispute which was referred to the Labour Court, Ahmedabad and registered as Reference No.(LCA) 1240/98. The Labour Court, after hearing the parties, passed the award as stated hereinabove.

3. Learned counsel for the petitioner submitted that looking to the irregularities committed by the respondent, the Labour Court ought not to have set aside the order of dismissal and no back wages should have been granted. He further submitted that the punishment imposed by the Labour Court is not in consonance with the gravity of the misconduct committed by the respondent.

4. Learned counsel for the respondent submitted that the Labour Court has imposed punishment upon the respondent and therefore there is no case for interference by this Court in the present petition.

5. As a result of the hearing and perusal of the record it is found that the Labour Court has given cogent and convincing reasons for granting reinstatement. Looking to the misconduct of the respondent the Labour Court

has also imposed punishment of stoppage of two increments with future effect. I am, therefore, in complete agreement with the reasonings adopted and findings arrived at by the Labour Court and no case is made out to cause interference in the matter.

6. However, I am of the opinion that while exercising powers under section 11A of the Act, the Labour Court has committed an error in awarding back wages. No reasons are assigned for grant of back wages and the Labour Court was not justified in awarding back wages. In any case the law on the subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order.

7. Accordingly the award qua back wages is quashed and set aside. The award of the Labour Court is modified only to the aforesaid extent. It is clarified that the rest of the award is not disturbed. The petitioner shall

implement the award within a period of six weeks from the date Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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